

EXHIBIT 6

HRC Assistant
Director
Sarah Cohen
Deposition
Transcript
Redacted,
Publicly-filed

(Unredacted
version has been
filed under seal)

Local 8027

vs

Frank Edelblut

Docket No. 1:21-cv-01077-PB

SARAH COHEN

June 26, 2023



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<p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE</p> <p>Local 8027, AFT-New Hampshire, et al. Plaintiff, v. Frank Edelblut, Commissioner, et al Defendants. No. 1:21-cv-01077-PB</p> <p style="text-align: center;">DEPOSITION OF SARAH BURKE COHEN taken on behalf of the Plaintiffs at the New Hampshire Attorney General's Office, Concord, NH, on June 26, 2023, at 10:08 a.m.</p> <p>Court Reporter: Cynthia Foster, LCR LCR #14 (RSA 310-A:161-181)</p>	<p style="text-align: right;">3</p> <p style="text-align: center;">INDEX</p> <p>Deposition of Sarah Burke Cohen</p> <p>Examination by Mr. Bissonnette: 5</p> <p>Examination by Mr. Kahne: 96</p> <p>Examination by Mr. Kenison-Marvin: 119</p> <p style="text-align: center;">EXHIBITS</p> <p>59 Complaint 10</p> <p>60 Commission for Human Rights website 26</p> <p>61 Email BurkeCohen to Sheldon, 17 Nov 2021, HRC-00413-415 26</p> <p>62 Charge of Discrimination, [REDACTED] HRC-00416-420 37</p> <p>63 Public Education Questionnaire, HRC-00065-00067, 00067.1, 00068.1 63</p> <p>64 Fax from Perroni to Borysenko, Borysenko R.45 Response, 000001-17 72</p> <p>65 Exeter Regional Cooperative School District article by Karlyn Borysenko 72</p> <p>66 Email, Malachi to [REDACTED], 31 Aug 2022, HRC-00709-713 72</p> <p>67 Unwoke Army Tweet Thread and Related Documents, PL 00576-677 73</p>
<p style="text-align: right;">2</p> <p>APPEARANCES:</p> <p>On behalf of the Plaintiffs, Local 8027, AFT-New Hampshire, AFL-CIO: STROOCK & STROOCK & LAVAN LLP By: David Kahne, Esq., by Zoom 180 Maiden Lane New York, NY 10038 212-806-5648 dkahne@stroock.com</p> <p>On behalf of the Plaintiffs, Christina Philibotte, Andres Mejia, NEA-New Hampshire: ACLU OF NEW HAMPSHIRE By: Gilles Bissonnette, Esq. 18 Low Avenue, Unit 12 Concord, NH 03301 603-225-3080 gilles@aclu-nh.org</p> <p>On behalf of the Defendants, Frank Edelblut, Ahni Malachi, John Formella, et al: NH DEPARTMENT OF JUSTICE By: Nathan W. Kenison-Marvin, Esq. 33 Capitol Street Concord, NH 03301 603-271-1292 nathan.w.kenison-marvin@doj.nh.gov</p> <p>By Zoom: Peter Perroni, Esq. Jennifer Eber, Esq. Kayla Turner, Esq., kaylat@drcnh.org. Esther Dickinson, Esq., edickinson@nhnea.org</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">(EXHIBITS - continued)</p> <p>68 Email, BurkeCohen to Malachi, 18 Nov 2021, [REDACTED], HRC-00359-360, 00046-49, HRC-00930 77</p> <p>69 Email, BurkeCohen to Malachi, [REDACTED], 18 Nov 2021, HRC-00039-50 78</p> <p>70 Email, BurkeCohen to Malachi, [REDACTED], 18 Nov 2021, HRC-00042-45, HRC-000932 80</p> <p>71 Public Education Intake Questionnaire, [REDACTED], HRC-00343-344, HRC-00936 81</p> <p>72 Email, BurkeCohen to Malachi, [REDACTED], HRC-00036-00038, HRC-965-966 82</p> <p>73 Email, BurkeCohen to Malachi, [REDACTED], HRC-000178-186, HRC-00213 82</p> <p>74 Email, [REDACTED] to HRC, HRC-01003-09 83</p> <p>75 Email, HRC to [REDACTED], 15 Apr 2022, HRC-00086-87 85</p> <p>76 Email, HRC to Malachi, 22 Apr 2022, [REDACTED], HRC-00340-341 86</p> <p>77 Email, [REDACTED] to Malachi, 7 Dec 2022, HRC-00187-212 87</p>

5

1 EXHIBITS (continued)

2 78 Email, BurkeCohen to Malachi, 18 Nov

3 2021, [REDACTED], HRC-00977-988 88

4 (Original exhibits retained by court reporter

5 and returned to Attorney Bissonnette)

6 (Scanned copies provided to all counsel)

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1 S T I P U L A T I O N S

2 It is agreed that the deposition shall

3 be taken in the first instance in stenotype and when

4 transcribed may be used for all purposes for which

5 depositions are competent under New Hampshire

6 practice.

7 Notice, filing, caption and all other

8 formalities are waived. All objections except as to

9 form are reserved and may be taken in court at trial.

10 It is further agreed that if the

11 deposition is not signed within thirty (30) days

12 after submission to counsel, the signature of the

13 deponent is waived.

14 It is further agreed that exhibits may

15 be retained by counsel until the time of trial.

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1 SARAH BURKE COHEN, DULY SWORN

2 MR. BISSONNETTE: I know, Attorney Kenison,

3 we have the same agreement with respect to prior

4 stipulations. Just confirming that.

5 MR. KENISON-MARVIN: Yes.

6 EXAMINATION

7 BY MR. BISSONNETTE:

8 Q Assistant Director Cohen, my name is Gilles

9 Bissonnette. I'm the Legal Director of the ACLU

10 of New Hampshire. I'm not sure we've met before

11 in fact.

12 A I'm not sure.

13 Q But it's a pleasure to meet you today, and my

14 role in this case is I represent a client group

15 in this case, in particular Andres Mejia and

16 Tina Philibotte with respect to a challenge to

17 kind of what we have all kind of called either

18 HB 2 or the amendments.

19 A Okay.

20 Q In this case. So that's my role and it's a

21 pleasure to meet you.

22 I'm just going to start off by just asking

23 whether or not you've ever been deposed before.

8

1 A I have not.

2 Q So the way this process works, I'm not trying to

3 trick you. There are no trick questions here.

4 So if you don't understand a question, please

5 tell me. If you don't understand wording, you

6 know, please let me know. Otherwise, I will

7 assume that you understand the question. Okay?

8 A Okay.

9 Q And please as well just try to avoid nonverbal

10 cues. As you know, we have a stenographer here

11 today. Her role is to record in full our

12 conversation, but what you cannot do is record

13 nonverbal communication. So I'd just ask that

14 you communicate orally. Okay?

15 A Okay.

16 Q If you need a break at any time, absolutely ask

17 me. It will absolutely be accommodated. The

18 only caveat there is that if there's a pending

19 question I would just ask that that question be

20 answered before we break, but I want to make

21 sure that you feel comfortable, as comfortable

22 as one can be amidst this process so if you need

23 to use the restroom, grab a drink of water, just

<p style="text-align: right;">9</p> <p>1 mentally take a break for a couple minutes, I</p> <p>2 understand. Just let me know at any time.</p> <p>3 A Okay.</p> <p>4 Q Will anything prevent you from giving truthful</p> <p>5 and accurate testimony today?</p> <p>6 A No.</p> <p>7 Q You're aware that this lawsuit is about a</p> <p>8 challenge to what some have called or the</p> <p>9 Plaintiffs have called the banned concepts law?</p> <p>10 A Yes.</p> <p>11 Q Just so we have the same kind of terminology, I</p> <p>12 I'm either going to use the term "the</p> <p>13 amendments" or "HB 2" to refer to the challenged</p> <p>14 legislation in this case, and I just want to</p> <p>15 make sure that when we both use that terminology</p> <p>16 that we're referring to the same thing. Does</p> <p>17 that make sense?</p> <p>18 A It does.</p> <p>19 Q Okay. Have you spoken to anyone at the Human</p> <p>20 Rights Commission about your deposition today?</p> <p>21 A No.</p> <p>22 Q I'm just going to mark Exhibit 59.</p> <p>23 (Exhibit 59 marked for identification)</p>	<p style="text-align: right;">11</p> <p>1 Commission?</p> <p>2 A I am the Assistant Director.</p> <p>3 Q And how long have you been in that role?</p> <p>4 A Since 2018.</p> <p>5 Q And what are your responsibilities in that role?</p> <p>6 A I am the direct supervisor for the intake</p> <p>7 coordinator and investigators.</p> <p>8 Q How do you supervise the intake coordinators?</p> <p>9 A We meet, the intake coordinators and I meet</p> <p>10 bi-weekly, and we discuss any questions the</p> <p>11 intake coordinator has about intakes that are</p> <p>12 coming in.</p> <p>13 Q Are decisions made in those meetings about</p> <p>14 whether to docket an allegation of</p> <p>15 discrimination?</p> <p>16 A Not always.</p> <p>17 Q Sometimes, though; is it fair to say?</p> <p>18 A Sometimes.</p> <p>19 Q What's the standard that's used in determining</p> <p>20 whether or not an allegation of discrimination</p> <p>21 should be docketed?</p> <p>22 MR. KENISON-MARVIN: Objection. Scope.</p> <p>23 You can answer.</p>
<p style="text-align: right;">10</p> <p>1 Q So I'm just going to ask to you review Exhibit</p> <p>2 59, Assistant Director Cohen. Just let me know</p> <p>3 when you're finished reviewing.</p> <p>4 A Okay.</p> <p>5 Q Have you reviewed Exhibit 59 --</p> <p>6 A I have.</p> <p>7 Q -- Assistant Director Cohen? And I just want to</p> <p>8 make sure that you understand that you're</p> <p>9 testifying on behalf of the Human Rights</p> <p>10 Commission with respect to the topics that are</p> <p>11 designated in Schedule A of Exhibit 59. Do you</p> <p>12 understand that to be the case?</p> <p>13 A I do.</p> <p>14 Q Okay. And you're prepared today to testify on</p> <p>15 those topics, correct?</p> <p>16 A I am.</p> <p>17 Q And I also just want to make clear that you</p> <p>18 understand that to the extent a question falls</p> <p>19 outside of these topics that you'll be</p> <p>20 testifying in your individual capacity; is that</p> <p>21 correct?</p> <p>22 A I understand that to be correct.</p> <p>23 Q What is your role at the Human Rights</p>	<p style="text-align: right;">12</p> <p>1 A So answering in my personal capacity, not as the</p> <p>2 Commission, we look at the jurisdiction, what</p> <p>3 the statute reads, right? So we determine in a</p> <p>4 light most favorable to the intake inquiry</p> <p>5 whether we'll take it or not. We base it on</p> <p>6 jurisdiction of number of employees, whether it</p> <p>7 substantively falls within the scope of 354-A.</p> <p>8 Q Okay. I think you also said that in your role</p> <p>9 you are direct supervisor of investigators as</p> <p>10 well.</p> <p>11 A Correct.</p> <p>12 Q Can you explain to me how that role functions?</p> <p>13 A I meet with the investigators once a month. We</p> <p>14 discuss their caseload, we discuss any questions</p> <p>15 they have moving cases along legal standard</p> <p>16 wise, any research that we need to do relative</p> <p>17 to a specific case, and I review their reports</p> <p>18 before they go up to the Commissioners to ensure</p> <p>19 they are complete.</p> <p>20 Q Are these cases that have already been docketed</p> <p>21 by the Human Rights Commission that are being</p> <p>22 investigated by the investigators?</p> <p>23 A Correct.</p>

<p style="text-align: right;">13</p> <p>1 Q When you say review reports that are completed</p> <p>2 by the investigators, is a report completed in</p> <p>3 every case that is docketed by the Human Rights</p> <p>4 Commission?</p> <p>5 MR. KENISON-MARVIN: Objection, scope. You</p> <p>6 can answer.</p> <p>7 A Answering in my, personally, so there are a</p> <p>8 number of different ways cases move through the</p> <p>9 Commission for Human Rights. You have cases</p> <p>10 that we go through what we call a full</p> <p>11 investigation so they get to the point where</p> <p>12 there is a finding issued by an investigating</p> <p>13 commissioner of either probable cause or no</p> <p>14 probable cause.</p> <p>15 However, there are other times that a case</p> <p>16 can sort of be resolved at the Commission.</p> <p>17 Complainants have the ability to remove the case</p> <p>18 to court. There's also potential of settlement</p> <p>19 of the cases. So if there's a resolution of</p> <p>20 settlement, then it gets closed. Or there are</p> <p>21 times where complainants decide they do not want</p> <p>22 to pursue their charge at the Commission any</p> <p>23 longer.</p>	<p style="text-align: right;">15</p> <p>1 A Until about probably close to the end of 2016.</p> <p>2 Q Okay. What does it mean to be a -- I know you</p> <p>3 supervise intake coordinators, but describe to</p> <p>4 me what that role entails.</p> <p>5 MR. KENISON-MARVIN: Objection. Scope.</p> <p>6 You can answer.</p> <p>7 A Answering with my personal knowledge, the intake</p> <p>8 coordinator's role is receive calls that come</p> <p>9 in, inquiries that come into the Commission.</p> <p>10 These inquiries come in both orally via the</p> <p>11 phone or via someone coming, a walk-in. Or they</p> <p>12 come in in written form via email or regular</p> <p>13 mail.</p> <p>14 The intake coordinator role is to sort of</p> <p>15 look at the jurisdictional components, and if</p> <p>16 the intake meets the jurisdictional components,</p> <p>17 to send out an intake questionnaire to that</p> <p>18 person, and then from there the intake</p> <p>19 questionnaire comes in and if it still meets the</p> <p>20 jurisdictional components for a charge of</p> <p>21 discrimination, the intake coordinator for those</p> <p>22 who are pro se or unrepresented as a courtesy</p> <p>23 assist them with drafting a charge of</p>
<p style="text-align: right;">14</p> <p>1 Q Okay. So with the exception of those cases in</p> <p>2 which there's been a settlement or withdrawal or</p> <p>3 removal to Superior Court, in all other cases</p> <p>4 are reports completed by investigators?</p> <p>5 MR. KENISON-MARVIN: Same objection.</p> <p>6 A Answering for myself personally, yes.</p> <p>7 Q Thank you. I know we got into the weeds pretty</p> <p>8 quickly there, but I'm going to take a little</p> <p>9 bit of a step back. Before 2018, what were you</p> <p>10 doing before 2018?</p> <p>11 A I was --</p> <p>12 Q Before your role here. Sorry. To be specific.</p> <p>13 Professionally.</p> <p>14 A So I have been with the Commission since 2015.</p> <p>15 Q Okay. What was your role between 2015 and 2018</p> <p>16 at the Commission?</p> <p>17 A I started in 2015 as the intake coordinator.</p> <p>18 Q How long were you in that role?</p> <p>19 A I was in that role, so I was promoted to a</p> <p>20 full-time investigator in 2016. However,</p> <p>21 because of staffing I was still completing the</p> <p>22 position of intake coordinator.</p> <p>23 Q Understand. Okay.</p>	<p style="text-align: right;">16</p> <p>1 discrimination.</p> <p>2 Q Okay. Once that charge of discrimination comes</p> <p>3 in, what's the intake coordinator's role at that</p> <p>4 point in evaluating that?</p> <p>5 MR. KENISON-MARVIN: Same objection.</p> <p>6 A Answering for my personal knowledge is once, so</p> <p>7 charge comes in as docketed, it has to be signed</p> <p>8 and verified by the Complainant. That is</p> <p>9 considered a docketed charge. The intake</p> <p>10 coordinator's role is also to be the keeper of</p> <p>11 the cases that are unassigned, that they have</p> <p>12 not been assigned to an investigator.</p> <p>13 Q Okay. Is part of the role of an intake</p> <p>14 coordinator in assessing whether or not there's</p> <p>15 a prima facie claim of discrimination?</p> <p>16 MR. KENISON-MARVIN: Same objection.</p> <p>17 A For my personal knowledge, yes.</p> <p>18 Q What is the criteria used in determining whether</p> <p>19 the prima facie standard has been met by a</p> <p>20 person alleging discrimination?</p> <p>21 MR. KENISON-MARVIN: Same objection.</p> <p>22 A From my personal experience, evaluating an</p> <p>23 inquiry is looking at the statutory jurisdiction</p>

<p>17</p> <p>1 of the Commission for Human Rights pursuant to</p> <p>2 354-A which looks at number, looking at what</p> <p>3 type of claim it is, public accommodation,</p> <p>4 public education, housing, or employment, and</p> <p>5 looking at the statutory requirements depending</p> <p>6 on that from there.</p> <p>7 If it's employment you look at the number</p> <p>8 of employees to ensure that there are the</p> <p>9 requisite number of employees. From there you</p> <p>10 also look to see if the allegations actually</p> <p>11 fall within what our statute says we can</p> <p>12 investigate.</p> <p>13 Q Gotcha. Okay. Thank you. That's helpful.</p> <p>14 A Um-hum.</p> <p>15 Q I just want to make sure I understand your</p> <p>16 background. You were promoted in 2016 to, how</p> <p>17 did you frame it? Full-time intake coordinator?</p> <p>18 A No. That is not what I said.</p> <p>19 Q What did you say?</p> <p>20 A So in 2015 intake coordinator was part-time.</p> <p>21 Q Okay.</p> <p>22 A 2015. So I was part-time in 2015. I was</p> <p>23 promoted in 2016 to full-time investigator.</p>	<p>19</p> <p>1 A Um-hum.</p> <p>2 Q Great organization. How long were you a staff</p> <p>3 attorney at NHLA?</p> <p>4 A I was a staff attorney at NHLA starting in 2011.</p> <p>5 Q Okay. What was your role as a staff attorney at</p> <p>6 NHLA at that time?</p> <p>7 A I worked in the Fair Housing project.</p> <p>8 Q With Elliott Barry?</p> <p>9 A With Elliott.</p> <p>10 Q One of my heroes. Okay. As an attorney in the</p> <p>11 Fair Housing project, what generally were your</p> <p>12 day-to-day responsibilities?</p> <p>13 A That's going back a bit. Generally, so I was,</p> <p>14 working in this project I was also the testing</p> <p>15 coordinator for the Fair Housing program. So</p> <p>16 some of that was scheduling Fair Housing</p> <p>17 testing, some of it was representing clients.</p> <p>18 Some of it was preparing reports for the federal</p> <p>19 government as it is a federal grant that they</p> <p>20 have.</p> <p>21 Q Okay. Did you have any employment positions</p> <p>22 prior to 2011?</p> <p>23 A I was with New Hampshire Legal Assistance from</p>
<p>18</p> <p>1 Q Full-time investigator. I'm sorry. Okay.</p> <p>2 How long were you in that full-time</p> <p>3 investigator role?</p> <p>4 A From 2016 until my promotion to Assistant</p> <p>5 Director in 2018.</p> <p>6 Q Okay. So approximately two years. Could you</p> <p>7 describe to me what your role was as a full-time</p> <p>8 investigator between 2016 and 2018?</p> <p>9 A So describing, I'm describing it from my</p> <p>10 personal experience.</p> <p>11 Q Um-hum.</p> <p>12 A That an investigator's role is to investigate</p> <p>13 the cases that are docketed, right? So part of</p> <p>14 that is requesting information, document</p> <p>15 information, it can be, it is also interviewing</p> <p>16 complainants and individually named parties and</p> <p>17 any other witnesses that would have relevant</p> <p>18 information for the case.</p> <p>19 Q Before you joined the Human Rights Commission in</p> <p>20 2015, what were you doing professionally?</p> <p>21 A I was a staff attorney at New Hampshire Legal</p> <p>22 Assistance.</p> <p>23 Q I didn't know that.</p>	<p>20</p> <p>1 2008.</p> <p>2 Q Okay. What was your role at NHLA generally</p> <p>3 between 2008 and 2011?</p> <p>4 A I was considered a paralegal.</p> <p>5 Q Okay. You went to law school, I know.</p> <p>6 A I did.</p> <p>7 Q When did you graduate law school?</p> <p>8 A I graduated law school in 2004.</p> <p>9 Q Where did graduate from?</p> <p>10 A Suffolk University Law School.</p> <p>11 Q And after you graduated, what was your first</p> <p>12 position of employment?</p> <p>13 A I believe I was working at RiverStone Claims</p> <p>14 Management.</p> <p>15 Q And how long were you there?</p> <p>16 A Let's see. I was there I believe a couple of</p> <p>17 years. Honestly, I can't remember.</p> <p>18 Q That's a long time ago, I know.</p> <p>19 A It is.</p> <p>20 Q And just to kind of short circuit this and close</p> <p>21 the loop kind of on your background, I'm just</p> <p>22 curious, kind of what were you doing</p> <p>23 professionally between 2004 when you graduated</p>

<p style="text-align: right;">21</p> <p>1 and 2008 before you joined NHLA?</p> <p>2 A So I was -- I took the bar exam. I took some</p> <p>3 time off from, I worked. During law school I</p> <p>4 worked for MetLife Auto and Homes in-house</p> <p>5 counsel. I took some time off after I graduated</p> <p>6 to study for the bar exam. [REDACTED]</p> <p>[REDACTED] I started working at</p> <p>8 RiverStone Claims Management as a legal</p> <p>9 assistant/paralegal. I can't remember exactly</p> <p>10 what the title was. And I was processing or</p> <p>11 doing sort of the background of processing</p> <p>12 general liability claims for the attorneys that</p> <p>13 worked for RiverStone.</p> <p>14 Q Are you currently licensed in New Hampshire?</p> <p>15 A I am.</p> <p>16 Q When did you obtain your license?</p> <p>17 A 2011.</p> <p>18 Q Do you personally assign cases to investigators</p> <p>19 after a case is docketed?</p> <p>20 A Yes.</p> <p>21 Q How is that decision made as to who a case gets</p> <p>22 assigned to?</p> <p>23 MR. KENISON-MARVIN: Objection. Scope.</p>	<p style="text-align: right;">23</p> <p>1 Q With respect to allegations of discrimination</p> <p>2 that are made under RSA 354-A:29 to 34, are</p> <p>3 those cases in which the Director would always</p> <p>4 be involved in determining whether it's</p> <p>5 docketed?</p> <p>6 MR. KENISON-MARVIN: Same objection.</p> <p>7 A From my personal knowledge, I believe so.</p> <p>8 Q Okay. And I believe you testified earlier that</p> <p>9 there are meetings that occur between you and</p> <p>10 intake coordinators about how to handle</p> <p>11 allegations of discrimination including whether</p> <p>12 to docket them, correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. And at least in some instances during</p> <p>15 those meetings there's determinations made as to</p> <p>16 whether or not the prima facie standard has been</p> <p>17 met, correct?</p> <p>18 A Correct.</p> <p>19 Q Is the Director involved in those meetings as</p> <p>20 well or present during those meetings?</p> <p>21 MR. KENISON-MARVIN: Same objection.</p> <p>22 A Sometimes. Depending on her schedule.</p> <p>23 Q I was going to ask kind of what determines that.</p>
<p style="text-align: right;">22</p> <p>1 You can answer.</p> <p>2 A So we assign cases in order of the way they've</p> <p>3 been received.</p> <p>4 Q Okay. Is your supervisor, the Director, ever</p> <p>5 involved in determining whether or not an</p> <p>6 allegation of discrimination should be docketed?</p> <p>7 A Yes.</p> <p>8 Q Okay. Under what circumstances would the</p> <p>9 Director be involved in that docketing decision?</p> <p>10 MR. KENISON-MARVIN: Same scope objection.</p> <p>11 A So from my personal knowledge, it could be, if</p> <p>12 it's a case, so some of it is if I'm not</p> <p>13 available.</p> <p>14 Q Okay.</p> <p>15 A Sometimes it's if it's something that we are</p> <p>16 doing that's newer. Like when public education,</p> <p>17 straight-up public education was added to the</p> <p>18 statute. We also had discussions, would have</p> <p>19 been revolving around RSA 354:29 through 34 when</p> <p>20 it was added to the statute.</p> <p>21 Q Could I have that last response just read back</p> <p>22 to me just so I make sure I heard it correctly?</p> <p>23 (Requested portion read back by court reporter)</p>	<p style="text-align: right;">24</p> <p>1 So it's scheduling issues would dictate whether</p> <p>2 or not she's there or not there; is that</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q Just so we have a common understanding, I'm</p> <p>6 actually just going to put before you a document</p> <p>7 that's been previously marked Exhibit 1.</p> <p>8 I'm going to ask you to review Exhibit 1,</p> <p>9 but I'm going to give you my question in advance</p> <p>10 before you read it and simply going to be is it</p> <p>11 your understanding that this is the law being</p> <p>12 challenged in this case. So that's the</p> <p>13 question, and I'd just ask you to review it, and</p> <p>14 let me know when you're done with your review.</p> <p>15 I know, Assistant Director Cohen, that</p> <p>16 you're still reviewing this document, but I just</p> <p>17 wanted to flag the operative text on Exhibit 1</p> <p>18 is PL 004 to PL 007. Thank you.</p> <p>19 A I'm sorry. What was the question?</p> <p>20 Q Sure. So the question is I just want to make</p> <p>21 sure we have a common understanding that the</p> <p>22 language in Exhibit 1 from PL 004 to PL 007 is</p> <p>23 the text of the legislation that's being</p>

<p style="text-align: right;">25</p> <p>1 challenged in this case.</p> <p>2 A So the text that I am familiar with that I am</p> <p>3 here to, my understanding is what I'm here to</p> <p>4 testify under would be PL 004 to PL 006. I can</p> <p>5 only testify as to 354-A. The remaining</p> <p>6 sections of 006 and 007 are not the statute that</p> <p>7 I am familiar with.</p> <p>8 Q Okay.</p> <p>9 A So with that caveat, it is my understanding that</p> <p>10 it appears that the document that you provided</p> <p>11 has the statutory addition to 354-A.</p> <p>12 Q Okay. So I just want take make sure I</p> <p>13 understand your testimony that you're prepared</p> <p>14 to, you're prepared to talk about with respect</p> <p>15 to complaints in particular those made under</p> <p>16 354-A:29 to 34. Correct?</p> <p>17 A That is correct.</p> <p>18 Q And that's not the case with respect to RSA</p> <p>19 193:40. Is that fair to say?</p> <p>20 A That is correct.</p> <p>21 Q And I just want to make sure I understand your</p> <p>22 testimony that is not a statute that you're</p> <p>23 familiar with, correct?</p>	<p style="text-align: right;">27</p> <p>1 compound.</p> <p>2 A Answering personally, it appears that this is</p> <p>3 the Commission's website. It appears that this</p> <p>4 is the intake questionnaire that is available on</p> <p>5 the Commission's website.</p> <p>6 Q Okay. I'm going to refer you to the front page</p> <p>7 of the blank questionnaire form on Exhibit 60.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And the language states, Was the offered</p> <p>11 program/training part of an extracurricular</p> <p>12 activity, question mark. Do you see that?</p> <p>13 A I do.</p> <p>14 Q Were you involved in the creation of this</p> <p>15 questionnaire or the form questionnaire on</p> <p>16 Exhibit 60?</p> <p>17 A Personally, yes.</p> <p>18 Q How were you involved in its creation?</p> <p>19 A I typed it into the system.</p> <p>20 Q I guess my -- maybe I could ask a question a</p> <p>21 little bit more generally. Who took a stab at</p> <p>22 the first draft of the questionnaire that's</p> <p>23 attached to Exhibit 60?</p>
<p style="text-align: right;">26</p> <p>1 A Correct.</p> <p>2 Q Okay. That's helpful. I appreciate that, and</p> <p>3 again, it's just to make sure that we're on the</p> <p>4 same page when we talk about the challenged law</p> <p>5 and the amendments so I appreciate that</p> <p>6 clarification.</p> <p>7 I am going to mark a new exhibit.</p> <p>8 (Exhibit 60 marked for identification)</p> <p>9 (Exhibit 61 marked for identification)</p> <p>10 Q I've put two exhibits before you. Exhibit 60 is</p> <p>11 a printout of the HRC's website stating How to</p> <p>12 File a Complaint, and also attached to Exhibit</p> <p>13 60 is a blank Public Education Intake</p> <p>14 Questionnaire Form for RSA 354-A:29 to 34 that I</p> <p>15 can represent to you that I printed out from the</p> <p>16 HRC's website.</p> <p>17 So I'd ask you to review Exhibit 60 and</p> <p>18 confirm whether or not this is an accurate</p> <p>19 reflection of the HRC's website with respect to</p> <p>20 how to file a complaint and an accurate</p> <p>21 reflection of the Public Intake Questionnaire</p> <p>22 Form under RSA 354-A:29-34.</p> <p>23 MR. KENISON-MARVIN: Objection on scope and</p>	<p style="text-align: right;">28</p> <p>1 MR. KENISON-MARVIN: Objection. Scope and</p> <p>2 vague. You can answer.</p> <p>3 A I don't recall.</p> <p>4 Q Okay. Were you involved in reviewing drafts of</p> <p>5 this form questionnaire?</p> <p>6 A Yes.</p> <p>7 Q Do you recall providing feedback or comments on</p> <p>8 any provisions of the form?</p> <p>9 A I do not recall specifically.</p> <p>10 Q Okay. I'm just going to refer you now to</p> <p>11 Exhibit 61 which I'll just submit is an email</p> <p>12 from you to it seems like several other New</p> <p>13 Hampshire employees copied Director Ahni Malachi</p> <p>14 dated November 17, 2021.</p> <p>15 I'll just ask you to review Exhibit 61 and</p> <p>16 let me know when you're completed your review.</p> <p>17 Have you finished reviewing Exhibit 61?</p> <p>18 A I have.</p> <p>19 Q What is Exhibit 61?</p> <p>20 A It appears to be an email.</p> <p>21 Q Okay. And it seems to me at least that this is</p> <p>22 an email exchange in mid-November 2021 that's</p> <p>23 discussing how to modify the HRC's complaint</p>

<p style="text-align: right;">29</p> <p>1 website to reflect the passage of the</p> <p>2 amendments. Is that a correct characterization</p> <p>3 of what this email chain is?</p> <p>4 A It appears to be an email to, yes, Department of</p> <p>5 Information Technology to update the</p> <p>6 commission's website with the specified updates.</p> <p>7 Q When was the Human Rights Commission's website</p> <p>8 updated to reflect the fact that members of the</p> <p>9 public can file allegations of discrimination</p> <p>10 under the amendments?</p> <p>11 MR. KENISON-MARVIN: Objection. Scope.</p> <p>12 A I'm not sure.</p> <p>13 Q Would it have been -- what I'm trying to get at</p> <p>14 is timing. Would it have been around November</p> <p>15 of 2021?</p> <p>16 A I don't recall.</p> <p>17 Q Okay. Bear with me. I just wanted to ask a</p> <p>18 followup question with respect to the role of</p> <p>19 investigators. Is there a scenario in which an</p> <p>20 investigation concerning an allegation of</p> <p>21 discrimination can occur before it is docketed?</p> <p>22 MR. KENISON-MARVIN: Objection. Scope.</p> <p>23 A I'm sorry. Can you ask that again?</p>	<p style="text-align: right;">31</p> <p>1 Human Rights Commission do in evaluating whether</p> <p>2 an allegation of discrimination meets the prima</p> <p>3 facie threshold? And what I mean by fact</p> <p>4 gathering is just external factual</p> <p>5 investigations of the claim.</p> <p>6 MR. KENISON-MARVIN: Objection. Scope.</p> <p>7 Vague. Compound. You can answer.</p> <p>8 A It may not seem like it is, but that is a</p> <p>9 complicated question.</p> <p>10 Q I'm not familiar with this process.</p> <p>11 A I'm struggling with answering, you know, that</p> <p>12 question.</p> <p>13 Q It's probably because just being an outsider to</p> <p>14 this process I'm using terms that may not make</p> <p>15 as much sense to you. So what's complicated,</p> <p>16 why is that question kind of hard to answer from</p> <p>17 your perspective?</p> <p>18 A So answering this personally --</p> <p>19 Q Um-hum.</p> <p>20 A -- an intake comes in and an inquiry is made.</p> <p>21 An intake questionnaire is requested of the</p> <p>22 inquirer, I would say, if that person hasn't</p> <p>23 already submitted one. So that would be</p>
<p style="text-align: right;">30</p> <p>1 Q Sure. Of course. My question is are there</p> <p>2 circumstances in which an allegation of</p> <p>3 discrimination could be investigated before it's</p> <p>4 actually docketed by the Human Rights</p> <p>5 Commission?</p> <p>6 MR. KENISON-MARVIN: Same objection.</p> <p>7 A I'm not sure I can answer that.</p> <p>8 Q Is it because of the term "investigation"?</p> <p>9 A Yes.</p> <p>10 Q So I'll try not to use that word because I can</p> <p>11 see how that could complicate things.</p> <p>12 Is there any fact gathering that the HRC</p> <p>13 conducts with respect to allegations of</p> <p>14 discrimination before a determination is made</p> <p>15 that it meets the prima facie threshold and is</p> <p>16 docketed? And if so, just what does that look</p> <p>17 like?</p> <p>18 MR. KENISON-MARVIN: Objection. Scope.</p> <p>19 Compound. You can answer.</p> <p>20 A I'm going to say potentially, and then I need</p> <p>21 you to, I would prefer you be more specific</p> <p>22 about any other further questions on that.</p> <p>23 Q Sure. So what if any fact gathering does the</p>	<p style="text-align: right;">32</p> <p>1 gathering evidence.</p> <p>2 Q Okay.</p> <p>3 A Or gathering information. So I'm not sure,</p> <p>4 that's why I'm struggling with understanding</p> <p>5 what you're looking for.</p> <p>6 Q Okay. So I guess that's helpful so beyond kind</p> <p>7 of reaching out to the complainant and asking</p> <p>8 them to submit a questionnaire, is there any</p> <p>9 other fact gathering that the Human Rights</p> <p>10 Commission would do before it's decided to</p> <p>11 docket a complaint?</p> <p>12 MR. KENISON-MARVIN: Same objection.</p> <p>13 Scope.</p> <p>14 A Not generally.</p> <p>15 Q Okay. Thank you. You can set both of those</p> <p>16 aside.</p> <p>17 A I put them over here.</p> <p>18 Q You already did it. Great.</p> <p>19 I'm going to direct your attention to</p> <p>20 Exhibit 56.</p> <p>21 So I'd just ask you to review Exhibit 56,</p> <p>22 Assistant Director Cohen, and let me know when</p> <p>23 you've done your review.</p>

<p style="text-align: right;">33</p> <p>1 While you review that, Assistant Director</p> <p>2 Cohen, so as to not hide the ball what I'm going</p> <p>3 to be referring you to and asking you about is</p> <p>4 the text that's highlighted on page 28 of</p> <p>5 Exhibit 56, HRC-00392. So I just wanted to</p> <p>6 highlight that before you review, and just let</p> <p>7 me know when you've completed it.</p> <p>8 A Okay.</p> <p>9 Q So what is Exhibit 56?</p> <p>10 A Exhibit 56 appears to be the New Hampshire</p> <p>11 Commission for Human Rights Commissioners'</p> <p>12 Meeting minutes from October 7th, 2021.</p> <p>13 Q Okay. And on the bottom of page 2, on the page</p> <p>14 Bates stamped HRC-00392, there is a sentence</p> <p>15 that states, "Assistant Director Burke Cohen and</p> <p>16 Director Malachi explained that the likely</p> <p>17 inspiration was that there have been instances</p> <p>18 in which information has been presented in</p> <p>19 trainings in K through 12 classrooms that states</p> <p>20 directly and/or impliedly that inherent traits</p> <p>21 establish a person's inferiority/superiority."</p> <p>22 Do you see that language?</p> <p>23 A I do.</p>	<p style="text-align: right;">35</p> <p>1 MR. KENISON-MARVIN: Same objection.</p> <p>2 A Answering from my personal recollection, no.</p> <p>3 Q Okay. You can set that aside.</p> <p>4 I recognize that the limits of your</p> <p>5 testimony here are kind of with respect to HSA</p> <p>6 354-A:29-34 so that's what I'm going to be</p> <p>7 referring to in this next series of questions,</p> <p>8 but my question is do you know what types of</p> <p>9 instruction that has occurred in New Hampshire</p> <p>10 that the amendments in RSA 354-A:29-34 were</p> <p>11 intended to ban?</p> <p>12 MR. KENISON-MARVIN: Objection. Scope.</p> <p>13 Vague.</p> <p>14 A Could you ask that question again, please?</p> <p>15 Q Sure. I guess what I'm trying to figure out is</p> <p>16 could you identify, are you aware of any</p> <p>17 instruction that occurred by an educator in New</p> <p>18 Hampshire before the enactment of the amendments</p> <p>19 that would have violated the amendments had the</p> <p>20 amendments been in effect during that time of</p> <p>21 instruction?</p> <p>22 MR. KENISON-MARVIN: Same objections.</p> <p>23 A No.</p>
<p style="text-align: right;">34</p> <p>1 Q Is that an accurate reflection of what was</p> <p>2 stated during the October 7, 2021, HRC</p> <p>3 Commissioner's meeting?</p> <p>4 MR. KENISON-MARVIN: Objection. Scope.</p> <p>5 A I can say that it's in the meeting minutes.</p> <p>6 Q Do you recall this being stated during the</p> <p>7 October 2021 meeting?</p> <p>8 A I do not recall specifically.</p> <p>9 Q Do you know what's being referenced on page 2</p> <p>10 when the document states that the inspiration</p> <p>11 was that there have been instances in which</p> <p>12 information has been presented in trainings and</p> <p>13 K through 12 classrooms that states directly</p> <p>14 and/or impliedly that inherent traits establish</p> <p>15 a person's inferiority/superiority?</p> <p>16 MR. KENISON-MARVIN: Same objection.</p> <p>17 A Answering personally, and looking at the</p> <p>18 document, it says in the first paragraph, I mean</p> <p>19 in that earlier paragraph the impact of HB 2.</p> <p>20 Q Um-hum. There's a reference here to, quote,</p> <p>21 "have been instances" on page 2 of this exhibit.</p> <p>22 Do you recall with any specificity what those</p> <p>23 instances are that are referred to?</p>	<p style="text-align: right;">36</p> <p>1 Q Okay. I'm going to move on to just some of the</p> <p>2 complaints now that I know are in the topics of</p> <p>3 Exhibit 59. So I'm just going to direct your</p> <p>4 attention, if you go back, Assistant Director</p> <p>5 Cohen, to Exhibit 59? I'm trying to find a way</p> <p>6 to streamline this so we're not here all day.</p> <p>7 So if you look at the Schedule A to Exhibit 59?</p> <p>8 (Discussion off the record)</p> <p>9 (Recess taken 10:57 - 11:01 a.m.)</p> <p>10 Q Thank you, Assistant Director Cohen. I'm going</p> <p>11 to direct your attention to Exhibit 59 and in</p> <p>12 particular on the Schedule A at the bottom of</p> <p>13 page 1 of the Schedule A on to page 2 of the</p> <p>14 Schedule A there are a list of kind of</p> <p>15 complaints as defined in that Schedule A made</p> <p>16 under the amendments based on at least my review</p> <p>17 of the documents that have been produced by the</p> <p>18 Human Rights Commission.</p> <p>19 So my question to you is are the complaints</p> <p>20 that are listed on the bottom of page 1 and 2 in</p> <p>21 the Schedule A the complete list of complaints</p> <p>22 or allegations of discrimination that have been</p> <p>23 made under the amendments to the Human Rights</p>

[illegible]

6 cleanup questions on process that I neglected to
7 ask, and then we'll go through the rest of the
8 complaints.

9 With respect to on Exhibit 1, the
10 amendments that have been challenged in this
11 case, with respect to RSA 193:40 on the page
12 Bates stamped 006 to 007, I believe your
13 testimony earlier was you're not familiar with
14 that section; is that correct?

15 A Not familiar. Have I read it before, yes. Am I
16 familiar with it, not particularly.

17 Q Is it the Department of Education that's tasked
18 with enforcing those provisions?

19 MR. KENISON-MARVIN: Objection. Scope.
20 Calls for legal conclusion. You can answer.

21 A It appears that is what RSA 193 does.

22 Q Okay. With respect to, now I'm going to turn
23 your attention to other provisions of Exhibit 1.

1 In particular, RSA 354-A:31 on page PL 0004. Do
2 you see that?

3 A Starts on line 36 of PL 0004?

4 Q Yes. And in particular the statute says no
5 public employer. Do you see that language?

6 A Yes.

7 Q Is it correct that under RSA 354-A:31 it is only
8 a public employer and not an individual employee
9 that would be held liable under this section?

10 MR. KENISON-MARVIN: Objection. Scope.
11 Calls for legal conclusion.

12 A Did you want me to answer? Okay.

13 Q Yes. If you can.

14 A I thought you didn't want me to answer. I'm
15 sorry. I was confused by that. I'm sorry. Now
16 we have to go back.

17 Q Let me just ask it a different way. I'm not
18 trying to trick you here.

19 A No.

20 Q What I'm trying to get at is under RSA 354-A:31,
21 can an individual public employee be sued?

22 MR. KENISON-MARVIN: Same objection.

23 Q Or is that statute limited to public employers?

71

1 [REDACTED]
[REDACTED]
[REDACTED]

4 Q Okay. All right. So we're going to move now on
5 to another complaint, and then we're going to
6 plow ahead. I'm doing the ones that I'm likely
7 to ask more questions first. Can we just pause
8 for one second?

9 (Discussion off the record)

10 Q So before you, Assistant Director Cohen, I know
11 that you have I believe five exhibits, and I
12 think these all pertain to a complaint that was
13 submitted by [REDACTED], and
14 so kind of in the interest of not hiding the
15 ball and just making sure that all the documents
16 are in one place, I just wanted to present them
17 all before you at once.

18 So I'm just going to kind of list off for
19 people on Zoom and for clarity in the record
20 just what these [REDACTED] exhibits are and I'll
21 just go exhibit by exhibit.

22 So the first is an exhibit previously
23 marked as Exhibit 46 that's actually in this

1 instance produced by the Department of
2 Education, and at the bottom of Exhibit 46 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. That's Exhibit
6 46.
7 Exhibit 64 is the complete set of documents
8 that were presented by Ms. Borysenko in response
9 to a subpoena that was served in this case.
10 Those documents are Bates stamped Borysenko 01
11 to 17.
12 In addition, in Exhibit 65 I have a website
13 article published by Ms. Borysenko on August
14 19th, 2022. Incidentally, that website is
15 referenced by Ms. Borysenko in Exhibit 46 in her
16 email to the Human Rights Commission dated
17 August 19th of 2022.
18 Exhibit 66 is an email chain Bates stamped
19 HRC 709 to 713 that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

1 [REDACTED]

2 Q Oh, okay. How long were you on maternity leave

3 for? Approximate dates if you don't mind me

4 asking.

5 A July 14th through October 15th, we'll just say.

6 Q Okay. First, congratulations.

7 A Thank you.

8 Q I hope your child which would now be what, a

9 year?

10 A Almost a year.

11 Q Hope it's sleeping.

12 A Mostly. Mostly.

13 Q I know the troubles there. Nate and I were just

14 talking about that incidentally. I recognize

15 you don't have personal knowledge. You were on

16 maternity leave or parental leave at that time.

17 Do you recall though how the Commission

18 responded? Do you have knowledge about how the

19 Commission responded to this complaint?

20 A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Age Group	Percentage of Respondents
18-29	1
30-49	2
50-69	3
70+	4
18-29	5
30-49	6
50-69	7
70+	8
18-29	9
30-49	10
50-69	11
70+	12
18-29	13
30-49	14
50-69	15
70+	16
18-29	17
30-49	18
50-69	19
70+	20
18-29	21
30-49	22
50-69	23
70+	24

Age Group	Percentage of Respondents
18-29	76%
30-49	72%
50-64	68%
65+	1%

76

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 Q Okay. It's fair then to say even before the

11 docketing which didn't occur in this instance

12 there was no engagement between the Human Rights

13 Commission and the School District, correct?

14 A It appears that way from what you've presented

15 to me.

16 Q Okay. Let me just go over my notes. I have a

17 couple questions. Probably five minutes left.

18 A If you want to go over your notes, I'm going to

19 go to the ladies room.

20 (Recess taken 12:51 - 12:57 p.m.)

21 Q I'm going to put before you Exhibit 4 and

22 Exhibit 14.

23 A Okay.

91

1 Q So I'm going to start with Exhibit 4 which you
2 haven't yet seen in this case and this is an
3 OpEd that was published by the Commissioner of
4 Education in June of 2021 as this law was being
5 processed by the legislature.

6 A Um-hum.

7 Q You are welcome to read this entire thing and
8 you probably should, but I'm going to in
9 particular direct your attention to a paragraph
10 that talks about Ibram Kendi. So why don't you
11 just read this OpEd and tell me when you're
12 done, and I'll direct your attention
13 specifically to the Kendi provision of the OpEd.
14 Okay?

15 A Um-hum. Okay.

16 Q Have you seen Exhibit 4 before today?

17 A I may have read it when it came out. I don't
18 remember.

19 Q Okay. I'm just going to refer you, there's a
20 paragraph here about a book written by Dr. Kendi
21 in which Commissioner Edelblut quotes a portion
22 of that book with a quote being, "The only
23 remedy to racist discrimination is antiracist

92

1 discrimination. The only remedy to past
2 discrimination is present discrimination. The
3 only remedy to present discrimination is future
4 discrimination."

5 So my question is if a teacher taught those
6 quoted sentences in a New Hampshire school, does
7 the Human Rights Commission have an opinion as
8 to whether or not that would violate RSA
9 354-A:29-34?

10 MR. KENISON-MARVIN: Objection. Scope.
11 Legal conclusion. Vague. You can answer from
12 your personal knowledge.

13 A My personal knowledge would be you would have to
14 have an intake questionnaire.

15 Q So I guess my question is -- I understand that.
16 I suppose if a teacher had this concern, you
17 know, hey, the Commissioner of Education wrote
18 this in an OpEd, I want to use this book and
19 teach this book, and they're concerned that
20 doing so may violate RSA 354-A:29 to 34, could
21 they call the Human Rights Commission and get an
22 answer to that question?

23 MR. KENISON-MARVIN: Objection. Scope.

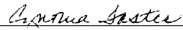

<p style="text-align: right;">93</p> <p>1 A The Human Rights Commission is open to answer</p> <p>2 questions about the statute to either party to a</p> <p>3 charge. Right? To either a complainant calling</p> <p>4 with questions about whether they have a charge</p> <p>5 or a respondent calling with questions about,</p> <p>6 you know, the law itself.</p> <p>7 Q Sure. So if an educator called and said I want</p> <p>8 to teach this book, I don't know whether it's</p> <p>9 covered by the law or not, especially because</p> <p>10 Commissioner Edelblut cited it in an OpEd, would</p> <p>11 they be able to get an answer from the Human</p> <p>12 Rights Commission as to whether or not teaching</p> <p>13 that book would be covered under the law or not?</p> <p>14 MR. KENISON-MARVIN: Objection. Scope.</p> <p>15 A In my personal opinion, there's a lot more to,</p> <p>16 as you may know or may not know, when you're</p> <p>17 teaching a course there's a lot more to whether</p> <p>18 you're teaching a book or not teaching a book</p> <p>19 and what goes along with that course. It's a</p> <p>20 complicated question because you have to look at</p> <p>21 the context of things. Are you mentioning the</p> <p>22 book? I mean, there's a lot to it. You know,</p> <p>23 that's what I'll say.</p>	<p style="text-align: right;">95</p> <p>1 refer you now to Exhibit 14.</p> <p>2 So on Exhibit 14 I'm just going to refer</p> <p>3 you to what's listed as Topic Eight, PL 741 to</p> <p>4 745. This is a chapter of a book by Tiffany</p> <p>5 Jewell, Chapter 10. The book is called This</p> <p>6 Book is Anti-Racist. I would submit to you that</p> <p>7 it's for 11 to 15 year olds. And I'd also</p> <p>8 submit to you that it's a book that was</p> <p>9 referenced by the Commissioner of Education with</p> <p>10 respect to the amendments during a July 2021</p> <p>11 Board of Education meeting.</p> <p>12 So my question to you is if an educator in</p> <p>13 light of the Department of Education's reference</p> <p>14 to this book had a concern about whether the</p> <p>15 teaching of this book violated RSA 354-A:29-34,</p> <p>16 your recommendation would be that they would</p> <p>17 reach out to District Counsel as to get an</p> <p>18 answer as to whether or not this complied with</p> <p>19 the law?</p> <p>20 A Correct.</p> <p>21 Q Any other recommendation for an educator wanting</p> <p>22 to know whether or not teaching this book would</p> <p>23 violate the law?</p>
<p style="text-align: right;">94</p> <p>1 Q Sure. So I guess I'll try to put a finer point</p> <p>2 on it because we have in Exhibit 4 three</p> <p>3 sentences that the Commissioner of Education</p> <p>4 cites as being potentially problematic.</p> <p>5 So if a teacher taught the following</p> <p>6 sentences in a classroom, quote, "the only</p> <p>7 remedy to racist discrimination is antiracist</p> <p>8 discrimination, the only remedy to past</p> <p>9 discrimination is present discrimination, the</p> <p>10 only remedy to present discrimination is future</p> <p>11 discrimination," if that was taught in a public</p> <p>12 school would that violate RSA 354-A:29 to 34?</p> <p>13 MR. KENISON-MARVIN: Objection, scope.</p> <p>14 A I'm not sure I would, when people call and ask</p> <p>15 us advice about the law there's a fine line</p> <p>16 between us telling them what the law says and</p> <p>17 giving them legal advice. I could not give a</p> <p>18 teacher or complainant legal advice on whether</p> <p>19 them teaching that would make a charge or not.</p> <p>20 Q Okay.</p> <p>21 A That would be something they would have to talk</p> <p>22 to an attorney about.</p> <p>23 Q Okay. You can set that aside. I'm going to</p>	<p style="text-align: right;">96</p> <p>1 MR. KENISON-MARVIN: Objection. Scope.</p> <p>2 106.</p> <p>3 A What?</p> <p>4 MR. KENISON-MARVIN: Rule of completeness.</p> <p>5 You can answer.</p> <p>6 A I would suggest that the educator read the law,</p> <p>7 read the FAQs that are available as well as the</p> <p>8 opinion issued by the Attorney General's office.</p> <p>9 Q And what if they after reading the law, reading</p> <p>10 the FAQ, and reading the September 21 AG opinion</p> <p>11 still had questions about whether certain</p> <p>12 instructions were covered, what would that</p> <p>13 educator do?</p> <p>14 MR. KENISON-MARVIN: Same objection on</p> <p>15 scope.</p> <p>16 A I would suggest they contact their legal counsel</p> <p>17 for legal advice.</p> <p>18 Q Okay. You can set those aside.</p> <p>19 MR. BISSONNETTE: Attorney Kahne, I'm done</p> <p>20 with my examination.</p> <p>21 EXAMINATION</p> <p>22 BY MR. KAHNE:</p> <p>23 Q I'm sorry I'm doing this virtually, Assistant</p>

<p style="text-align: right;">97</p> <p>1 Director Burke Cohen. It's better to be there</p> <p>2 in person, but hopefully, I'll ask Gilles to</p> <p>3 assist me with some of the documents. There</p> <p>4 shouldn't be very many documents, and I also</p> <p>5 shouldn't be very long. So I think we can do</p> <p>6 this pretty efficiently if that's okay.</p> <p>7 A Okay.</p> <p>8 Q My name is David Kahne. I am an attorney for</p> <p>9 the American Federation of Teachers. In this</p> <p>10 lawsuit the same rules that Gilles went over</p> <p>11 with you will apply to my questioning. Do you</p> <p>12 understand that?</p> <p>13 A I do.</p> <p>14 Q Okay. There's a few areas I'd like to ask you</p> <p>15 about, some of which you covered with Gilles.</p> <p>16 I'd just like to ask a few followup questions.</p> <p>17 The first is the process about docketing</p> <p>18 complaints. If I understand your testimony</p> <p>19 correctly, allegations of discrimination that</p> <p>20 are brought to the HRC can become a docketed</p> <p>21 complaint; is that right?</p> <p>22 A Yes.</p> <p>23 Q And they become a docketed complaint after there</p>	<p style="text-align: right;">99</p> <p>1 have available to us.</p> <p>2 So an investigation starts with often we</p> <p>3 request information in our notice letter from</p> <p>4 the respondent which is their answer to the</p> <p>5 charge as well as any affirmative defenses that</p> <p>6 they are putting forward.</p> <p>7 From there we ask for additional</p> <p>8 information as we need it. We interview</p> <p>9 complainants or witnesses or respondents</p> <p>10 depending on the case and depending on the fact</p> <p>11 pattern. It's hard to make a generalized</p> <p>12 outline of what an investigation looks like</p> <p>13 because I don't know the facts of each specific</p> <p>14 case.</p> <p>15 But generally speaking, collect</p> <p>16 information, documentation, that may or may not,</p> <p>17 you know, help with the case, right? Sometimes</p> <p>18 you get documentation from parties that is not</p> <p>19 super helpful, but we also use our tools of</p> <p>20 interviewing people so that we can gather that</p> <p>21 information and make a recommendation to the</p> <p>22 Investigating Commissioner.</p> <p>23 Q And as part of that investigation has it, in</p>
<p style="text-align: right;">98</p> <p>1 has been a finding that the prima facie elements</p> <p>2 of discrimination have been met?</p> <p>3 MR. KENISON-MARVIN: Objection to scope.</p> <p>4 Go ahead.</p> <p>5 A Personally, from my personal experience, yes.</p> <p>6 Q Okay. And after there is a docketed complaint,</p> <p>7 is it your testimony that after that occurs then</p> <p>8 a factual investigation takes place?</p> <p>9 MR. KENISON-MARVIN: Objection, scope. You</p> <p>10 can answer.</p> <p>11 A Yes. An investigation occurs after -- I'm</p> <p>12 sorry. Not directly after. Once an</p> <p>13 investigator is assigned to the case, an</p> <p>14 investigation commences.</p> <p>15 Q Okay. And you testified that you previously</p> <p>16 were an investigator; is that right?</p> <p>17 A I was.</p> <p>18 Q Okay. And so I'm interested in your describing</p> <p>19 the investigation process and particularly in</p> <p>20 the context of public schools.</p> <p>21 A Okay. From my personal experience as an</p> <p>22 investigator, if you've reviewed our Commission</p> <p>23 rules you can see what tool kit, like tools we</p>	<p style="text-align: right;">100</p> <p>1 your experience, has it been contacting school</p> <p>2 principals?</p> <p>3 A In my experience, yes, that can be part of an</p> <p>4 investigation.</p> <p>5 Q How about contacting district superintendents?</p> <p>6 A It can be part of an investigation.</p> <p>7 Q Are there any protocols in place as to when a</p> <p>8 superintendent should be contacted?</p> <p>9 MR. KENISON-MARVIN: Objection. Scope.</p> <p>10 Q Or is it at the discretion of the investigator?</p> <p>11 MR. KENISON-MARVIN: Same objection.</p> <p>12 A It would be -- again, each case is different.</p> <p>13 No case that we have is the same. So it would</p> <p>14 be sort of at the discretion of the</p> <p>15 investigator. You can see that how that's</p> <p>16 outlined in the rules. The investigator</p> <p>17 determines the relevancy of interviews with</p> <p>18 parties, interviews with witnesses, and</p> <p>19 collection of documents.</p> <p>20 So if a superintendent was part of that</p> <p>21 case fact pattern and needed to be contacted for</p> <p>22 investigation, that would happen. Generally by</p> <p>23 the time a case is assigned to an investigator,</p>

<p style="text-align: right;">101</p> <p>1 the respondent is represented by counsel. So</p> <p>2 any contact with the school would be through</p> <p>3 counsel.</p> <p>4 Q Do investigators contact other state agencies in</p> <p>5 your experience during the investigation phase</p> <p>6 like the Department of Education?</p> <p>7 A I suppose it could. We could.</p> <p>8 Q Who makes the ultimate determination as to</p> <p>9 whether or not a complaint gets docketed?</p> <p>10 MR. KENISON-MARVIN: Objection. Scope.</p> <p>11 A The ultimate decision essentially would be from</p> <p>12 the Executive Director, I mean, but with the</p> <p>13 caveat on that of it's determined by whether</p> <p>14 there's jurisdiction of the Commission. If</p> <p>15 there is a prima facie case, it is docketed. If</p> <p>16 there is not a prima facie case, then it's not</p> <p>17 docketed.</p> <p>18 Q But the determination as to whether or not</p> <p>19 there's been as prima facie case is made by the</p> <p>20 Executive Director?</p> <p>21 A I mean, that would be the ultimate decision</p> <p>22 maker. Yes.</p> <p>23 Q Are allegations of discrimination referred to</p>	<p style="text-align: right;">103</p> <p>1 to that person that they contact us directly.</p> <p>2 Q Has there been a case that the HRC opened where</p> <p>3 the Department of Education simply referred it</p> <p>4 the HRC without an individual filing an intake</p> <p>5 questionnaire?</p> <p>6 MR. KENISON-MARVIN: Objection. Scope.</p> <p>7 A I'm not sure. For my personal experience.</p> <p>8 Q You spoke earlier about your client service</p> <p>9 representative, right?</p> <p>10 A Yes.</p> <p>11 Q I'm not familiar with that so can you explain,</p> <p>12 the client service representative is an attorney</p> <p>13 at the Department of Justice; is that right?</p> <p>14 A That is correct.</p> <p>15 Q Is there one particular attorney that's assigned</p> <p>16 to the Human Rights Commission?</p> <p>17 A Yes.</p> <p>18 Q Who is that attorney?</p> <p>19 A During the time period of these, during the time</p> <p>20 period of this, I guess the complaints that</p> <p>21 we've discussed today, we've had two client</p> <p>22 service representatives. Assistant Attorney</p> <p>23 General Jill Perlow and Assistant Attorney</p>
<p style="text-align: right;">102</p> <p>1 the HRC from other state agencies?</p> <p>2 MR. KENISON-MARVIN: Objection. Scope.</p> <p>3 A In my experience they can be, yes.</p> <p>4 Q And under what circumstances have you had</p> <p>5 complaints referred to the HRC?</p> <p>6 A In my experience, we have had complaints</p> <p>7 referred from the New Hampshire Employment</p> <p>8 Security Office for employment-related</p> <p>9 complaints that they receive from their clients</p> <p>10 during unemployment filings, and we've received</p> <p>11 them on occasion from the Department of Labor as</p> <p>12 well.</p> <p>13 Q How about from the Department of Education?</p> <p>14 A We have received referrals from the Department</p> <p>15 of Education. Generally we ask that the</p> <p>16 referring agency tell the person to contact us</p> <p>17 directly.</p> <p>18 Q So generally that's what you do, but there have</p> <p>19 been instances in which the Department of</p> <p>20 Education has referred cases to the HRC?</p> <p>21 MR. KENISON-MARVIN: Objection. Scope.</p> <p>22 A So when cases are referred to us from any</p> <p>23 agency, we generally tell the agency to suggest</p>	<p style="text-align: right;">104</p> <p>1 General Sean Locke.</p> <p>2 Q And who is the person from HRC that decides</p> <p>3 whether to consult with your client service</p> <p>4 representative?</p> <p>5 A That would be the Director.</p> <p>6 Q Are there policies/procedures in place for when</p> <p>7 that request should be made for a consultation?</p> <p>8 MR. KENISON-MARVIN: Objection. Scope.</p> <p>9 A No specific procedures, no.</p> <p>10 Q So in this particular case, Attorney Bissonnette</p> <p>11 was referring to the [REDACTED] complaints. Do</p> <p>12 you remember his series of questions about that?</p> <p>13 A I do.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>19 Q Okay. And you said that the reason that you did</p> <p>20 so was because, I believe this is your</p> <p>21 testimony, that it was a relatively new</p> <p>22 statutory amendment; is that right?</p> <p>23 A That is correct.</p>

<p style="text-align: right;">113</p> <p>1 understanding as to whether or not it was added</p> <p>2 or deleted from the intake questionnaire?</p> <p>3 MR. KENISON-MARVIN: Same scope objection.</p> <p>4 MR. BISSONNETTE: If it would assist the</p> <p>5 witness, I would just say that the current</p> <p>6 version of the questionnaire is Exhibit 60.</p> <p>7 A Okay. Thank you.</p> <p>8 Q Thank you, Gilles.</p> <p>9 MR. BISSONNETTE: Yes.</p> <p>10 A So it appears that it was deleted using Exhibit</p> <p>11 60 as the current iteration.</p> <p>12 Q Does that refresh your recollection as to why it</p> <p>13 was deleted from the intake questionnaire form?</p> <p>14 A I don't know why it was deleted.</p> <p>15 Q Have you had any conversations with Commissioner</p> <p>16 Edelblut about the amendments?</p> <p>17 A No.</p> <p>18 Q How about Richard Farrell?</p> <p>19 A No.</p> <p>20 Q You testified to a conversation that you</p> <p>21 understand Commissioner Malachi had with</p> <p>22 Investigator Farrell about one particular</p> <p>23 complaint. Do you know whether Commissioner</p>	<p style="text-align: right;">115</p> <p>1 Q Applies it to complaints that come in through</p> <p>2 the complaint process.</p> <p>3 A Yes.</p> <p>4 Q Do you have any particular examples of that?</p> <p>5 A I do not.</p> <p>6 Q Do you know why the HRC requested that the</p> <p>7 Attorney General issue an opinion on the</p> <p>8 amendments?</p> <p>9 MR. KENISON-MARVIN: Objection. Scope.</p> <p>10 A I do not specifically, no.</p> <p>11 Q Does the HRC have any obligation to notify the</p> <p>12 Department of Education when there's been a</p> <p>13 docketed complaint?</p> <p>14 A No.</p> <p>15 Q How about when there's been a finding of</p> <p>16 probable cause for discrimination?</p> <p>17 A No.</p> <p>18 Q Ultimately, do the Commissioners vote once a</p> <p>19 complaint has gone through the docketed</p> <p>20 complaint phase, there's been an investigation,</p> <p>21 there's an Investigative Commissioner, can you</p> <p>22 just take me through the process after there's</p> <p>23 been a docketed complaint what else has to</p>
<p style="text-align: right;">114</p> <p>1 Malachi has had other conversations with</p> <p>2 Investigator Farrell about other complaints?</p> <p>3 A Director Malachi? And Investigator Farrell? I</p> <p>4 do not know.</p> <p>5 Q Do you know how frequently she speaks with the</p> <p>6 Department of Education?</p> <p>7 A I do not know.</p> <p>8 Q You testified, Attorney Bissonnette went through</p> <p>9 some of the complaints and asked whether or not</p> <p>10 certain content would violate the statute. I</p> <p>11 think you testified in sum and substance that it</p> <p>12 would depend on certain circumstances.</p> <p>13 My question is does the HRC have any</p> <p>14 guidance as to whether any particular</p> <p>15 educational materials violate RSA 354?</p> <p>16 MR. KENISON-MARVIN: Objection to scope.</p> <p>17 A I would say the guidance we have was issued by</p> <p>18 the Attorney General's office in his opinion and</p> <p>19 our FAQ on the statutes.</p> <p>20 Q Do you know whether anyone at the HRC uses the</p> <p>21 Attorney General's opinion or the FAQs?</p> <p>22 MR. KENISON-MARVIN: Objection to form.</p> <p>23 A Uses it for what?</p>	<p style="text-align: right;">116</p> <p>1 happen?</p> <p>2 MR. KENISON-MARVIN: Objection. Scope.</p> <p>3 Vague.</p> <p>4 A In accordance with RSA 354-A, if you read the</p> <p>5 statute, the way the Commission's process works</p> <p>6 is an Investigating Commissioner following the</p> <p>7 investigation makes a finding of either probable</p> <p>8 cause or no probable cause. If a case is found</p> <p>9 to be no probable cause, it is dismissed with</p> <p>10 appeal rights. If the case is found to be</p> <p>11 probable cause, it moves on in the process</p> <p>12 towards the public hearing. In between the</p> <p>13 public hearing and moving it from probable cause</p> <p>14 to public hearing, the parties meet for a</p> <p>15 conciliation and a prehearing, and then it moves</p> <p>16 to public hearing. After probable cause is</p> <p>17 found, both parties have the ability to remove</p> <p>18 the case to Superior Court.</p> <p>19 Q When Attorney Bissonnette showed you Exhibit 1,</p> <p>20 he asked you a question about who the, I don't</p> <p>21 know if it's respondent or charged party,</p> <p>22 typically is in these cases, and you looked at</p> <p>23 the definition of public employer and saw that</p>

<p style="text-align: right;">117</p> <p>1 it listed counties, cities, towns, precincts, 2 districts, school administrative units, et 3 cetera, and you said that it appeared from the 4 text of the statute that that's who the, it was 5 a prohibition on public employers. 6 Aside from the text of the statute, in 7 these cases have you ever seen a case that was 8 not brought against one of these entities? 9 MR. KENISON-MARVIN: Objection. Scope. 10 Vague. 11 A In the text -- I'm sorry. Can you clarify that 12 question? 13 Q Yes. So you were looking at 354-A:31? 14 A Yes. 15 Q Which is the prohibition on public employers. 16 A Okay. 17 Q And I believe the question was regarding who the 18 charged or responding party is in these cases. 19 A Correct. 20 Q And your testimony was that it lists who the 21 public employers are, and I'm just asking in 22 your experience has it been the case in these 23 cases that the charged party is school</p>	<p style="text-align: right;">119</p> <p>1 Q Just give me a couple more seconds here. Okay. 2 I think that's all I have. 3 MR. KENISON-MARVIN: I think I might have a 4 few quick followups, but I need to run to the 5 restroom quickly. 6 (Recess taken 1:37 - 1:53 p.m.) 7 MR. KENISON-MARVIN: First, before I do one 8 quick area of followup, I just wanted to put on 9 the record our right to read and sign and 10 reserving that. 11 MR. BISSONNETTE: Yes. So we've agreed 12 that hopefully we can get it done shorter than 13 the 30-day deadline because of briefing 14 purposes. Okay. Thank you. 15 MR. KENISON-MARVIN: I don't think we have 16 a final agreement as to date because we'll work 17 to get that done in accordance with the briefing 18 date. 19 MR. BISSONNETTE: So long as it's a few 20 days before the briefing deadline. 21 MR. KENISON-MARVIN: That's our intention. 22 EXAMINATION 23 BY MR. KENISON-MARVIN:</p>
<p style="text-align: right;">118</p> <p>1 districts, school administrative units or 2 quasi-public entities? 3 A [REDACTED] 4 [REDACTED] 5 Q How about allegations of discrimination? 6 A The intake inquiries have been generally from 7 the documentation the School Districts with the 8 exception I think as I recall one is naming the 9 Commissioner of Education directly. 10 Q Are you aware of a bounty that was put on 11 teachers by Moms for Liberty as a result of the 12 passage of the amendments? 13 MR. KENISON-MARVIN: Objection. Scope. 14 A I am. 15 Q And what is your understanding of that? 16 MR. KENISON-MARVIN: Same objection. 17 A My understanding is whatever was, I think it was 18 WMUR had an article on it. So I believe, my 19 understanding is that this group put a bounty 20 for and would pay for a docketed charge. 21 Q Did you have any conversations with anyone at 22 HRC about that article? 23 A Maybe. I don't remember specifically.</p>	<p style="text-align: right;">120</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 Q Okay. I don't have anything else. 19 MR. BISSONNETTE: Okay. I'm good if 20 Attorney Kahne is good? 21 MR. KAHNE: I'm good. 22 MR. BISSONNETTE: Okay. Thank you. 23 (Deposition ended at 1:54 p.m.)</p>

<p style="text-align: right;">121</p> <p>1 I have carefully read the foregoing</p> <p>2 deposition, and the answers made by me are true.</p> <p>3</p> <p>4</p> <p>5 _____</p> <p>6 SARAH BURKE COHEN</p> <p>7</p> <p>8 STATE OF _____</p> <p>9 _____, SS.</p> <p>10</p> <p>11 At _____ on the</p> <p>12 _____ day of _____ A.D.</p> <p>13 2023, personally appeared the above-named SARAH BURKE</p> <p>14 COHEN and made oath that the foregoing answers</p> <p>15 subscribed by her are true.</p> <p>16 Before me,</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 Notary Public</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">123</p> <p>1 E R R A T A</p> <p>2 I, the undersigned, SARAH BURKE COHEN, have read</p> <p>3 the transcript of my deposition held on June 26,</p> <p>4 2023, in the matter of Local 8027, AFT-New Hampshire,</p> <p>5 et al v. Frank Edelblut, Commissioner, et al, and the</p> <p>6 same is true and correct, to the best of my</p> <p>7 knowledge, with the exception of the following</p> <p>8 changes noted below, if any:</p> <p>9 PAGE/LINE CORRECTION AND REASON FOR CORRECTION</p> <p>10 _____</p> <p>11 _____</p> <p>12 See attached sheet(s) for additional information:</p> <p>13 _____</p> <p>14 Yes No</p> <p>15</p> <p>16 SARAH BURKE COHEN</p> <p>17</p> <p>18 STATE OF _____)</p> <p>19) ss.:</p> <p>20 COUNTY OF _____)</p> <p>21</p> <p>22 Subscribed and sworn to before me this _____ day</p> <p>23 of _____, 2023.</p> <p>24</p> <p>25 _____</p> <p>26 Notary Public</p> <p>27</p> <p>28 My commission expires:</p> <p>29 _____</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p>
<p style="text-align: right;">122</p> <p>1 C E R T I F I C A T E</p> <p>2 I, Cynthia Foster, Registered Professional</p> <p>3 Reporter and Licensed Court Reporter, duly authorized</p> <p>4 to practice Shorthand Court Reporting in the State of</p> <p>5 New Hampshire, hereby certify that the foregoing</p> <p>6 pages, numbered 7 through 120, are a true and</p> <p>7 accurate transcription of my stenographic notes of</p> <p>8 the deposition of SARAH BURKE COHEN who was first</p> <p>9 duly sworn by me on June 26, 2023, for use in the</p> <p>10 matter indicated on the title sheet, as to which a</p> <p>11 transcript was duly ordered;</p> <p>12 I further certify that I am neither</p> <p>13 attorney nor counsel for, nor related to or employed</p> <p>14 by any of the parties to the action in which this</p> <p>15 transcript was produced, and further that I am not a</p> <p>16 relative or employee of any attorney or counsel</p> <p>17 employed in this case, nor am I financially</p> <p>18 interested in this action.</p> <p>19</p> <p>20</p> <p>21  </p> <p>22 Cynthia Foster, LCR</p> <p>23</p>	

1 I have carefully read the foregoing
2 deposition, and the answers made by me are true.

3
4 
5 SARAH BURKE COHEN
6
7

8 STATE OF New Hampshire
9 Merrimack, SS.

10
11 At Merrimack County on the
12 21st day of July A.D.

13 2023, personally appeared the above-named SARAH BURKE
14 COHEN and made oath that the foregoing answers
15 subscribed by her are true.

16 Before me,

17
18
19 
20 Notary Public

21
22 Kelly A. Mederos, Esq
23 Notary Public, State of New Hampshire
My Commission Expires December 21, 2027